

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG

UNITED STATES OF AMERICA,	:	
	:	
v.	:	
	:	Case No. 5:22-CR-00008
GERALD LEONARD DRAKE,	:	
	:	
Defendant.	:	
_____	:	

DEFENDANT'S SENTENCING MEMORANDUM

Gerald Drake files the following sentencing memorandum requesting this Court sentence him to 84 months' imprisonment.

SUPPORTING FACTS

The following is Mr. Drake's letter of apology to the Court in this case. A handwritten version is attached as Exhibit 1:

Your Honor,

I would like to take this opportunity to offer the court, the community, and especially the victims and their families my sincere apology.

I know I cannot take back the anxiety, terror, and mental anguish that my actions caused. I will live the rest of my life knowing the harm I caused to my fellow citizens. I would like to let everyone know how sorry I am for all the trouble that I caused.

This was a senseless and dangerous act, I acted with no respect to the law, the interest of others or their safety. I sent letters threatening and scaring people. I also built a bomb that looked very capable of exploding and killing or maiming many innocent people. I was the only one that knew it wasn't functional. (dead battery and no igniter).

My actions not only caused mental anguish and terror, but could have resulted in many innocent people being injured in the chaos caused by my actions.

It was in December of 2018 that I came to my senses and realized the enormity of my senseless actions and the effect they were having on the recipients of my letters and the community at large. I have no valid excuse for my behavior and recognize what I did was wrong and unacceptable.

I accept that my actions caused severe stress and anxiety to innocent people, and I am fully responsible for this and accept the full blame for my actions.

I am very sorry for what I did and promise the court and society that I will do nothing like this ever again.

I understand and accept that I deserve punishment for what I've done and the several laws that I've broken. I understand that the court is well within its rights to sentence me to the full 10 years of this plea agreement, and if that is the case, I will accept that decision.

I can only hope that my apology and the fact that I did recognize the error of my ways and ended this campaign of terror on my own, will move the court to offer me some leniency.

See Exhibit 1. In addition to this letter, Mr. Drake has taken several steps to affirm his genuine remorse. First, he has paid his court costs in full, prior to sentencing. *See Exhibit 2 (Receipt of fees paid).* While this is required in every criminal case, it is rare that an individual pays these costs well in advance of sentencing. In fact, Mr. Drake was so early in paying his court costs that his criminal debt had not yet been entered into the system on the date of payment (April 18, 2023).

Second, he is approved as a trustee at Central Virginia Regional Jail, which is evidence of his exemplary behavior while incarcerated. *See Exhibit 3.* Third, he has

donated 38 books to the prison library, that he and his son paid cash for. This shows that not only has Mr. Drake been a model inmate, but he has improved conditions for many other individuals who are in prison. A list of the books that he has donated is attached as Exhibit 4.

Several individuals have written letters of support for Mr. Drake. His friends Duane Getzmeyer , Darrell Griffiths and Joyce Griffiths (collectively Exhibit 5), have all written letters of support. His son, Gerald D. Drake, has also written a letter and sent several pictures showing his father's various hobbies and international trips. See Exhibit 6.

Mr. Drake admits to placing the destructive device in the tent. However, the device was non-functional. It was missing an igniter switch and contained a dead battery. While it is still a destructive device under the law, it was not placed with the intent to inflict physical harm.

ARGUMENT

On April 28, 2023, Mr. Drake pled guilty to Possession of an Unregistered Destructive Device (Count 4) and Stalking (Count 5). Mr. Drake's plea agreement included a sentencing range of 84 to 120 months.

Mr. Drake's age, health, minimal criminal history, and showings of remorse, suggest that a sentence of 84 months is sufficient. He has taken several steps to make clear to the Court how sorry he is for his actions, to be a model inmate, and

improve the environment for those around him. Mr. Drake perpetrated a bomb hoax and accompanying threat campaign that went entirely too far. Seven years in prison is enough time to punish his actions and send a message of deterrence to others who might consider this type of behavior. He will be 70 years-old upon release and has never served a long sentence. His risk of recidivism is objectively low due to his age and history.

A sentence of seven years reflects the seriousness of this offense. The device had a dead battery and missing igniter and could not detonate. It was a prop placed to instill fear; however, it was never Mr. Drake's intent to physically hurt anyone. The threats were significant, but the mailings ended in 2018 and there was never any act in furtherance of the threats against specific individuals. Paragraph 90 of the PSR notes that in a case where the enhancements do not capture the seriousness of the offense because of the type of destructive device used, and that an upward departure may be warranted. The inverse should apply here, where the type of destructive device is less serious.

A seven-year sentence provides just punishment and promotes respect for the law. Mr. Drake's conduct ended in 2018. He has not sent any threats since then, and he has traveled the world and always returned to this district, despite being under investigation. He never posed a problem for law enforcement, having turned over everything they asked him for. Even after incarceration he has been a model inmate, donating books and working as a trustee. He has demonstrated his remorse and his respect for the law in numerous ways.

Finally, Mr. Drake's history and characteristics suggest that a seven-year sentence is sufficient. He is retired after having worked for the St. Clair County Road Commission for 25 years, and as welder for 11 years. He has no prior drug abuse history and no history of overt violence. He has never served a significant sentence, and for most of his life has been a law-abiding citizen, having a criminal history score of only 2.

Mr. Drake's criminal history includes 20-year-old misdemeanor convictions of sexual imposition and child endangering. These crimes do not suggest that Mr. Drake is an ongoing danger to the public. Mr. Drake has been removed from the sex offender registry. *See* Exhibit 7. The state of Virginia found that he completed court-ordered treatment, counseling, and restitution, and that he no longer poses a risk to public safety. While this Court will certainly make its own findings, the findings of the state court who reviewed this specific issue are persuasive.

Mr. Drake does not minimize his conduct. His letter to the Court is unequivocal in its remorse. He is fearful that, given his health issues and a family history of dying shortly after the age of 70, that a ten-year sentence will be a death sentence. A seven-year sentence meets the required objectives and is not overly punitive.

Respectfully submitted,

s/ Donald R. Pender

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ Donald R. Pender
Assistant Federal Public Defender